IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-07-2008

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN

WRIT PETITION NO.16173 OF 2004
and
WPMP.NO.19117 OF 2004

1. The Director of School Education,
Chennai 600 006.

2. The Chief Educational Officer,
Villupuram. .. Petitioners

Vs.

1. N. Nadusamy
S/o.D. Narayanasamy

2. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari to call for the records relating to the order dated 22.6.2000 made in O.A.No.367 of 1996, on the file of the Tamil Nadu AdministrativeTribunal,the 2nd respondent and quash the same.

For Petitioners : Mr.S. Rajasekar, A.G.P.,

For Respondent-1 : No Appearance

- - -

O R D E R

(Order of the Court was made by P.K. MISRA, J)

Heard Mr.S. Rajasekar, Addl. Government Pleader for the petitioners. Inspite of service of notice, there is no appearance on behalf of Respondent No.1 and his name has been printed in the list.

2. The present writ petition has been filed by the Direction of School Education and the Chief Educational Officer against the order passed by the State Administrative Tribunal (in short "Tribunal") in O.A.No.367 of 1996, dated 22.6.2000. The question relates to alteration of the date of birth of Respondent No.1.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

3. Respondent No.1 had entered into service on 23.10.1968. The date of birth, which was entered in the Service Register, is 7.5.1942. Respondent No.1 filed an application on 8.3.1995 before the departmental authorities for correction of his date of birth claiming that his date of birth should be recorded as 12.10.1945 instead of 7.5.1942. Such application having been rejected by order dated 5.10.1995, Respondent No.1 filed O.A.No.367 of 1996 before the Tribunal. The Tribunal relied upon an earlier order passed in O.A.No.2209 of 2000 dated 31.3.2000 and extracted the following paragraph from the said decision :-

> "The two conditions are prescribed in this Sub-Rule. One is that the application received after five years after entry into service and the another clause is that the application which is not supported by entries as mentioned above. However, if the intention of the rule makers is to reject all applications received after five years after entry into service, they could have stopped with the first limb f the Rules, namely that any application received after five years after entry into service shall be summarily rejected. But they have added one more limb, stating that any application which is not supported by entries, etc. shall also be summarily rejected. The intention is therefore clear that only in cases here the applications are not supported by the records mentioned in the above clauses, the applications would be summarily rejected. As I have already indicated, if the intention of the Rule makers was to reject all applications received after five years after entry into service, they could have stopped with the first limb of the rules."

4. On that basis, the Tribunal further concluded that since the applicant before the Tribunal had produced a birth certificate, i.e., one of the documents contemplated in 49(c) of the Tamil Nadu State and Subordinate Service Rules, the claim of the applicant should not have been rejected straight-away on the footing that such application had not been filed within a period of five years from the date of entry into service as contemplated in Rule 49(c).

WEB COPY

5. Rule 49(c) of the Tamil Nadu State and Subordinate Service Rules, as it stands, contemplates that such application for alteration of date of birth can be filed within a period of five years from the date of entry into service. However, it is not in dispute that before 1970 such Rule 49(c), containing the period of limitation, was not in force. Therefore, the question is as to whether those persons entered into service before introduction of such period of limitation can file application for alteration of date of birth at any time. This matter is no longer res integra. In the decision reported in (1994) 6 SCC 302 (STATE OF TAMIL NADU v. T.V. VENUGOPALAN), the Supreme Court has held that those

https://hcservices.ecourts.gov.in/hcservices/

persons, who entered into service before introduction of such period of limitation, are required to file an application for correction of date of birth within a period of five years from the date of introduction of such Rules and they cannot wait indefinitely for making such application. It has been repeatedly held by the Supreme Court that the application or litigation for correction of date of birth at the fag end, after long lapse of time, should not be entertained. This position is clear in view of the decision of the Supreme Court reported in (2005) 6 SCC 49 (STATE OF U.P. AND ANOTHER v. SHIV NARAIN UPADHYAYA).

6. In such view of the matter, we do not think that the Tribunal was justified in directing the present petitioner to consider the application for alteration of the date of birth of the Respondent No.1. The writ petition is accordingly allowed and the Original Application is dismissed. Since there is no appearance on behalf of Respondent No.1, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Dpk

To

1. The Registrar,
   Tamilnadu Administrative Tribunal,
   Chennai.

2. The Director of School Education,
   Chennai-600 006.

3. The Chief Educational Officer,
   Villupuram.

+ 1 CC to the Government Pleader SR NO.39216

ORDER IN WP.16713/2004

GGK {CO}
TP/25.9.08

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/